

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current Agreement the Southern Railway Company violated Rules 40, 42 and 132 of the Agreement on July 15, 1989 at Inman Yard, Atlanta, Georgia. This violation occurred when the Company improperly assigned car foremen M. W. Soulis and B. F. Cole to perform Carmen's work on freight car CR295659.

2. That the Southern Railroad Company now be ordered to compensate Carmen C. D. Hinton and W. H. Furlow eight (8) hours pay at the overtime rate in effect on the date of the violation.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As Third Party in Interest, the American Railway and Airway Supervisors Association was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The Organization filed a claim alleging the Carrier violated Rules 40, 42 and 132 of the applicable Agreement when Car Foremen were used to perform Carman's work at Inman Yard, Atlanta, Georgia on July 15, 1989.

These Rules read as follows, in pertinent parts:

"Rule 40(a)

Except as provided in this Rule 40 and Rules 39, 41, 42 and 44 of this Agreement, none but mechanics or student mechanics regularly employed as such will be assigned to do mechanics' work as per special rules of each craft, except at small points where minor or emergency jobs are required."

"Rule 42(a)

None but mechanics or student mechanics regularly employed as such shall do mechanics' work as per the special rule of each craft except foremen at points where no mechanics are employed...."

"Rule 132

"Rule 132. Carmen's work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars,repairing and removing and applying wood locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, wood tender frames and trucks...and all other work generally recognized as carmen's work."

In this case freight car CR295659 was disabled due to a missing coupler carrier on its "B" end. Two Car Foremen were used to move the car to the repair track for necessary repair. But to accomplish the move the Car Foremen raised the coupler to its proper height by using a ratchet hoist (come-a-long) and then chained the coupler in position in order to allow a locomotive to couple to the car to move it.

The Carrier argues that the work performed by the Car Foremen was not repair nor work reserved to the Carman's craft.

After reviewing the record the Board is persuaded that the Carrier violated the Rules at bar when the Car Foremen inspected freight car CR295659, determined the extent of work necessary to enable its movement, and then performed the work. Such conclusion is consistent with arbitral precedent in these matters. For example, Second Division Award 11934 recently concluded that car inspection is Carmen's work. In the instant case, the Foremen in question not only did that, but also performed preliminary repairs to get the unit to the repair track. Such, in the estimation of the Board, went beyond permissive de minimus work as outlined in Rule 40 of the Agreement. Nor was the work of an emergency nature.

The record is unclear on exactly how much time it took the Foremen to do the work. Absent clarification on this point the Board will award each Claimant four (4) hours' pay at pro rata rate. All other relief requested in the Statement of Claim is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1991.